

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of the Federal-State Joint Board
on Universal Service)

) CC Docket No. 96-45

Request for Comment on Certain of the
Commission's Rules Relating to High-Cost
Universal Service Support and the ETC
Designation Process)

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COMMENTS OF THE ALASKA TELEPHONE ASSOCIATION

I. INTRODUCTION

The Alaska Telephone Association ("ATA")¹ files these comments in response to the Public Notice ("Notice") of the Federal-State Joint Board on Universal Service ("Joint Board") dated February 7, 2003, regarding certain Federal Communications Commission ("FCC") rules relating to high-cost universal service support ("High-Cost Program") and the eligible telecommunication carrier ("ETC") designation process.

¹ The Alaska Telephone Association is a trade association comprised of rural Alaska local exchange telephone companies. Its active members are Alaska Telephone Company; Arctic Slope Telephone Association Cooperative; Bristol Bay Telephone Cooperative, Inc.; Bush-Tell, Inc.; Copper Valley Telephone Cooperative, Inc.; Cordova Telephone Cooperative; KPU Telecommunications; Matanuska Telephone Association; Nushagak Electric & Telephone Cooperative, Inc.; OTZ Telephone Cooperative; Summit Telephone Company; TelAlaska, Inc.; United Utilities, Inc.; and Yukon Telephone Company, Inc.

A. Topics covered by these comments

The ATA has a strong interest in many of the topics raised in the Notice, and appreciates the opportunity to comment on those issues of paramount importance to the ATA and its rural local exchange carrier (“LEC”) membership. These issues include:

- ▶ The ETC designation process in rural study areas performed by states under section 214(e)(2) of the Telecommunications Act of 1996 (the “Act”), and specifically the need for the FCC to adopt consistent and coherent guidance regarding the scope and content of the “public interest” inquiry. Notice, ¶ 34. (see **Section II** below);
- ▶ The problems that would arise if an ETC designee is permitted to serve less than an entire rural study area and still receive universal service funds. Notice, ¶ 35 (see **Section III** below);
- ▶ The scope of universal service funding (“USF”), and the importance to rural LECs of funding for all lines served – not just primary lines. Notice, ¶ 26-32 (see **Section IV** below); and
- ▶ The concept of auctioning, and the detrimental impact on rural LECs and consumers of awarding ETC status to the lowest bidder. Notice, ¶ 20. (see **Section V** below).

B. ATA’s stake in USF issues

Policies related to universal service in rural areas have particular significance in rural Alaska. Alaska represents the extreme in the challenges facing the provision of local exchange service in rural, remote, and insular areas. Many rural Alaskans live in areas inaccessible by roads – residents must rely transportation by air and boat. Community resources and information sources are in short supply. In light of these conditions, telecommunications service is a critical link to educational, health, and safety resources. But Alaska’s environment also makes the provision of telephone service extremely expensive. Without universal service support, it is clear that many Alaskans would be at risk for vital services.

Alaska's rural LECs, who comprise the membership of the ATA, provide high quality telephone service in and throughout the remote regions of Alaska, which, while boasting some of the most sublime landscapes in the Nation, also provide some of the greatest challenges with regard to providing and maintaining a high-quality, universally available telephone network. This daunting undertaking has been accomplished by rural LECs relying on the promise of a system of support that would encourage network investment. The investment for rural LECs to build-out networks have already been made, and this cost will not change regardless of the number of customers a rural LEC loses to a new ETC or otherwise. As a result, any policy which impacts the level of USF available or places the future of the fund itself at risk is a fundamental concern to the ATA's rural LECs because, quite simply, its members and its customers have the most at stake.

II. ETC DESIGNATION IN RURAL AREAS

It is absolutely vital for the Joint Board and the Commission to establish a uniform and realistic framework for examining ETC petitions in rural areas to ensure that the "public interest" inquiry mandated by § 214(e)(2) is undertaken by state commissions in a consistent, equitable, and sufficiently rigorous manner and in accordance with universal service principles. As explained in more detail below, this inquiry must at a minimum include the following:

- (i) an analysis of the actual benefits to consumers of the introduction of a new ETC in a rural area, which analysis must go beyond mere speculation that a new ETC will necessarily introduce a healthy and sustainable form of competition;
- (ii) an analysis of costs – both monetary and otherwise – of subsidizing two or more carriers in rural and remote areas that have (in the absence of universal service fund support) particularly disadvantageous economies of scale, and;

(iii) a measured balancing of (i) and (ii) based on affirmative evidence provided by the petitioner and the consideration of any countervailing evidence offered by others.

A. Federal guidelines are necessary to establish a consistent baseline for inquiry mandated by § 214(e)(2)

The FCC rules currently do not define the level of scrutiny required of state commissions by the Congressionally mandated “public interest” inquiry under 47 U.S.C. § 214(e)(2). This paucity of guidance has resulted in state commissions throughout the country handling the public interest analysis in a variety of manners – some through a thoughtful and deliberate administrative proceeding, others through a less rigorous process. What has become apparent in these proceedings is that the meaning of “public interest” under § 214(e)(2), and the manner in which the required public interest inquiry is to be performed, lacks clarity and consistency of application.

Particularly troubling is the argument raised by ETC applicants (including one such applicant currently before the Regulatory Commission of Alaska) and accepted by some state commissions, that designating a new ETC in a rural area must be in the public interest because it increases competition. This argument rests on two false assumptions: (1) that additional ETC designations necessarily increases competition, and (2) that all competition in rural areas (whether publicly funded or not) is beneficial to the public interest. If true, these assumptions render the public interest inquiry practically superfluous – a result Congress, in promulgating § 214(e)(2), clearly did not intend.

The public interest inquiry is not a “rubber stamp.” It requires state commissions to thoughtfully consider the pros and cons of subsidized competition,² and the concomitant impact on the universal service fund,³ spawned by each additional ETC designation. This requires the development of an appropriate administrative record and the consideration of evidence (not just the promises of the applicant). This obligation cannot be taken lightly:

The State Commissioners play a key role in determining if a competitor is eligible for universal service support. They need to take great care in doing this – greater care, in my opinion, than some have in the recent past.

Commissioner Jonathan S. Adelstein, Address at the NTCA Annual Meeting and Expo (February 3, 2003).

This proceeding provides a valuable opportunity for the Joint Board and Commission to provide the guidance needed by state commissions (including the Regulatory Commission of Alaska) who are currently wrestling with the required scope and depth of the “public interest” standard in the ETC context.

B. Alaska’s recent experience with ETC applications in rural study areas

In the past few years, Alaska has begun to face applications for ETC designation. The first ETC application filed by a wireless carrier in a rural study area in Alaska to

² It is important to make certain that competitive issues do not divert the focus of the inquiry from the true and ultimate goal of universal service: To ensure access to affordable telecommunications service to all Americans.

³ When performing its public interest inquiry, a state commission cannot avoid issues concerning the overall health of USF simply by finding that “just one more” ETC will not, by itself, overtax the fund. The USF is a bounded resource, and turning a blind eye on the broader impact of proliferating ETC applications on this resource will result in a “tragedy of the commons” that could ultimately compromise the USF system.

reach the stage in the designation process in which a public interest inquiry will be conducted⁴ is currently pending before the Regulatory Commission of Alaska (“RCA”). This case provides a fitting example of how an ETC applicant can use the uncertainty surrounding the scope of § 214(e)(2) as a ploy to obfuscate and undermine the public interest inquiry.

First, the petitioner is attempting to rely on simple self-certification to support its petition. The petitioner claims that the undefined “threshold showing” mentioned in recent ETC cases considered under § 214(e)(6), supports the notion that a mere promise (as opposed to any affirmative evidence) is sufficient to support an ETC petition and that an ETC petitioner bears no burden of proof with regard to the public interest inquiry. If this is the “lesson” to be drawn from federal ETC precedent, then the criteria and considerations set forth at 47 U.S.C. § 214(e) are superfluous – and require no more than checkmarks on a form: “Will you follow § 214? Yes/No.” This is clearly not the law.

Second, the petitioner argues that granting its petition is in the public interest because it will increase competition and produce all the benefits flowing therefrom: increased choice, better rates and new services. The major error here is in the presumption that a new ETC will necessarily increase beneficial competition. Designating a new ETC may increase beneficial competition, it may not; but it is a factor that cannot be dismissed by presumption.

A telephone company does not need to become an ETC to compete with an incumbent. For example, wireless providers are highly competitive in rural areas, and

⁴ One other petition filed by a wireless carrier was withdrawn by the carrier before the public interest inquiry was reached.

already provide service in part or all of many rural study areas in Alaska and elsewhere. To use our Alaska case study as one example, the study area in which the petitioner is seeking ETC designation is currently being served by no fewer than four wireless carriers (including the petitioner itself), all of which have been actively providing service in competition with the incumbent LEC without USF. The point being that if wireless providers are already present and competing in part or all of these rural areas, what additional "public interest" is served by ETC designation? ETC designation does not introduce competition, since it is already there; rather, it may simply subsidize the build-out of a redundant network, or be used to increase the competitive ETC's earnings. Spending public funds in either of these circumstances is a is a wasteful expenditure of USF, a concern which has not been lost on the Commission.⁵

Finally, the petitioner has attempted to downplay, and in many respects completely ignore, the potential harms that can flow from ETC designation. For example, customers may be harmed if a new ETC's service quality is below that of the incumbent LEC. Multiple ETCs may squelch innovation or the deployment of advanced services. Delivering new or advanced services to remote parts of high-cost areas is, almost by definition, expensive and burdensome. If there is no guarantee that an ETC will actually capture or maintain a remotely located customer, the incentive to undertake the time and investment is decreased. More broadly, subsidizing multiple

⁵ *In the matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 01-304, rel. Nov. 18, 2001, separate statement of Commissioner Kevin J. Martin ("I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund.")

carriers in a rural region may result in ballooning of the universal service fund beyond politically acceptable levels, harming both incumbents and new ETCs and ultimately, of course, consumers.

In sum, the uncertainty resulting from a lack of federal guidance on the scope and depth of the inquiry required by § 214(e)(2) has left ETC petitioners in rural study areas, including those in Alaska, in a position to lobby state commissions to ignore three of the fundamental pillars of any public interest inquiry: (1) the development of a sound administrative record through the production of affirmative evidence; (2) the demonstration by the applicant of actual (not presumed) benefits; and (3) a measured consideration by the state commission of the countervailing harms of designating an additional ETC in a rural study area.

C. Factors a state commission should consider when examining the public interest

The public interest inquiry under § 214(e)(2) demands a reasoned cost/benefit analysis: A balancing of the actual (not presumed) benefits of designating an additional ETC and the costs to consumers of subsidized competition in a high-cost area. The framework for the inquiry must be based on the premise, inherent in the Congressional mandate of § 214(e)(2), that the designation of a new ETC in a rural study area may not be in the public interest, even if that carrier has the ability to provide the nine basic services and to advertise the same. This approach has previously been described by Commissioner Adelstein:

We must ensure that the benefits that come from increasing the number of carriers we fund outweigh the burden of increasing contributions for consumers. The public interest also demands that regulators seriously consider whether the market can support more than one carrier with

universal service. If not, the new designations shouldn't be given as a matter of course just because it appears they meet other qualifications.⁶

To this end, the public interest inquiry must involve an affirmative showing by the ETC petitioner and a consideration of relevant evidence by others on at least the following points:

1. Whether the petitioner has demonstrated a concrete intent to serve. The ability to provide the nine basic services is considered under § 214(e)(1), but the intent to serve is something different. An ETC petitioner that claims that it will provide increased or advanced services to customers must produce a concrete plan for the delivery of those services and/or a date certain on deployment; otherwise, any potential benefit is speculative, conclusory and should not tend to support an ETC application.
2. Whether the petitioner has shown that it will provide service at affordable rates.
3. Whether the petitioner has demonstrated sufficient financial wherewithal to provide supported services throughout the service area.
4. Whether the petitioner has demonstrated that it will, throughout the study area, satisfy the same service quality standards to which the incumbent LEC is subject.
5. Whether the petitioner has demonstrated that it can provide consumers with those benefits that it promises in its petition, such as increased choices, better rates and additional services.
6. Whether designating the petitioner as an ETC will harm consumers through inadequate service quality, unacceptable "dead spots," disincentives for investment, or otherwise.
7. Whether the petitioner will bring sufficient incremental benefits to consumers to warrant providing universal service support to carrier(s) other than the rural LEC.

⁶ Commissioner Jonathan S. Adelstein, Address at the NTCA Annual Meeting and Expo (February 3, 2003).

- D. A state commission can add considerations to the public interest inquiry or conditions to ETC designation as necessary to respond to local concerns

The list of public interest factors identified above is a baseline, and represent the minimum amount of information that is necessary to make a reasoned, supportable public interest determination under § 214(e)(2). The adoption of these factors as federal guidelines would go a long way to ensuring consistency and equity in ETC designation processes nationwide.

Some state commissions may have state-specific concerns, and consequently may wish to augment the baseline considerations described above. A state commission has the authority to impose additional conditions on an ETC applicant consistent with the public interest. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-418 (5th Cir. 1999).

- E. ETC designation in high-cost areas must be consistent with universal service principles

Once the baseline public interest factors (and any additional state-specific factors) are considered, there is one additional, and overarching issue that must be examined: Whether the designation of an additional ETC in the rural study area in question is consistent with universal service principles.

While all universal service principles must be observed in actions impacting the USF, several principles are of particular concern when multiple ETCs are designated in rural, high-cost areas: Specifically, competitive neutrality and the predictability of universal service mechanisms. *See* 47 U.S.C. § 254(b)(5).

1. Competitive neutrality

Competitive neutrality can be compromised where an ETC entering a rural study area does not share the same commitments or obligations of the incumbent LEC. The risk of “cream skimming” (where a new ETC only serves the highest density, relatively lowest cost regions of a study area) is the most often cited, but there are other neutrality concerns as well. Since the level of funding is determined by the cost per line of the incumbent LEC, if a new ETC’s costs are substantially lower for any reason, the result is a windfall for the new ETC. This disparity may occur through differences in cost of the technology employed (*e.g.*, wireless vs. wireline), but can also result where a new ETC avoids service quality obligations or carrier of last resort (“COLR”) responsibilities borne by the rural incumbent LEC.

Again, the Alaska case study provides an example of this concern in practice. The ETC petitioner has made clear that, if designated, it will not agree to service quality standards or COLR obligations (which the petitioner claims can never be imposed on a wireless carrier) or even to serve remote customers absent a directive of the state commission. The ETC petitioner is basically seeking the benefits of ETC status (access to USF) without concomitant responsibilities. While mobile service providers are exempt from many of the requirements imposed upon LECs, this changes as soon as a mobile provider petitions for ETC status and seeks public funding. Those who seek public money to provide service in high-cost areas are accountable to those individuals (*i.e.* the consumers) who fund the enterprise. Pursuing an ETC designation is a choice, not a requirement. With ETC designation comes the responsibility to provide rural consumers with a baseline level of service. Overcompensating a new ETC or favoring one technology over another is inconsistent with the principle of competitive neutrality.

2. Predictable support mechanisms

Each time a new ETC is designated in a high-cost area one must ask the question: Does it makes sense to pay two carriers to build redundant networks in an area in which, without USF, a single network provided by a single carrier would not be economically viable? If ETC status is freely granted in high-cost areas, the clear incentive is for all carriers (even those who currently provide service and compete in rural areas without USF) to seek ETC status. Indeed, as in the Alaska case study described above, once one of four wireless carriers competing in a rural study area is designated as an ETC, it is almost a business imperative that the others quickly follow suit. The result is USF being used to create and expand a third, fourth, etc., publicly funded network. Such a scenario would quickly exhaust existing resources and lead to the ruin of the USF system. This clearly undermines the predictability and sufficiency of the USF program and compromises the preservation and advancement of universal service.

In sum, designating a new ETC in a rural area where there is marginal or no public benefit puts an unnecessary burden on already strained universal service resources. It is of utmost importance to “ensure that the public interest is served by the efficient use of universal service support.”⁷ To this end, the public interest inquiry should provide a reasoned assessment of whether benefits exceed costs, including the added burden on the fund.

⁷ *In the Matter of the Federal-State Board on Universal Service*, CC Docket No. 96-45, FCC 03J-2, rel. April 2, 2003, ¶ 9.

III. DISAGGREGATION IS NOT THE ANSWER

In its Notice the Joint Board posed the following question: “In light of the Commission finding that disaggregation zones encourage efficient market entry, what weight should states and the Commission place on the presence of such zones when determining whether the designation of a competitive ETC below the study area level is in the public interest?” The short answer is that little if any weight should be given to the mere existence of disaggregation zones when considering whether to designate a new ETC in a rural study area. It should also be made clear that any of the considerations discussed below with regard to disaggregation are in addition to the baseline cost/benefit considerations (outlined above at Section II(C)) required to satisfy the public interest inquiry.

Disaggregation was conceived as a remedy to “cream skimming” but, by itself, is not a cure-all to this problem. Nor is disaggregation a recipe for efficient market entry. Rather, disaggregation is just the first step in a multi-step process (described in subsection A below) to ameliorate “cream skimming”.

Even where this multi-step process is strictly observed, it must be carefully considered and implemented to ensure that the result is consistent with universal service principles: There are some rural study areas in Alaska in which, due to extreme variations in geography and a unique patchwork of exchanges, designating an ETC below the study area level would not be in the public interest even if the risk of “cream skimming” is minimized (*see* subsection B below).

A. Disaggregation is only the first step to efficient market entry

As an initial matter, it is important to clarify that disaggregation is not synonymous with efficient market entry, nor has the Commission so stated. Rather, the

Commission has explained the more limited proposition that *not* disaggregating leads to uneconomic incentives.⁸ So, disaggregation is necessary, but does not stand alone.

There are other conditions to consider; namely, (i) geographic rate averaging and (ii) business/residential cross subsidization. These implicit subsidies are independent from USF, and are not automatically disaggregated as a result of the creation of disaggregated USF zones. If either of these implicit subsidies is ignored, “cream skimming” can still occur whether or not USF disaggregation zones are present.

Geographic rate averaging is the normalization of local rates across all regions of a rural study area – higher cost and lower cost alike. As a hypothetical example, assume an incumbent LEC’s study area has average monthly loop costs ranging from \$50 per line per month in its lowest cost area to \$1,000 per line per month in its highest cost area with a weighted average cost of \$200 per line per month. Where geographic rate averaging has been implemented, all customers in the study area would pay the same rate, designed to recover the average \$200 cost per month. Even where disaggregated USF zones exist (distinguishing higher-cost from lower-cost areas with respect to USF allocation), if a LEC’s geographically averaged rates have not been deaveraged as well, the incumbent is still vulnerable to cream-skimming. A competitive ETC entering a low cost USF zone, would be able to inequitably undercut the incumbent’s average rate (in our example, the cost per line in the lower-cost area is 1/4th that of the geographically

⁸ *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 11244, 11302 (2001) (“Rural Task Force Order”), ¶ 145 (“We agree with the Rural Task Force and commenters that the provision of uniform support throughout the study area of a rural carrier may create uneconomic incentives for competitive entry and could result in support not being used for the purpose for which it was intended, in contravention of section 254(e).”)

averaged cost, giving the new ETC plenty of opportunity for inequitable pricing); or to charge the same rate as the incumbent and receive a windfall. In either case, the incumbent LEC would be using the geographically averaged rate to subsidize service in higher-cost areas, which the competitive ETC would not have to do.

The same analysis applies to business/residential cross subsidization, where rates are structured so that business customers pay more for service to lessen the burden on residential customers. A competitive ETC which does not employ this cross subsidization will be able to cream skim business customers from the incumbent LEC, regardless of USF disaggregation.

In sum, the fundamental objectives for requiring service over an entire study area are to ensure universal service and competitive neutrality and to minimize the possibility for cream skimming. These goals cannot be realized unless, in addition to the creation of disaggregated USF zones, all implicit subsidies are eliminated.

B. Alaska rural study areas raise additional concerns

The steps described above are necessary prior to designating an ETC in below the study area level. However, even when these steps are strictly observed public interest concerns may remain, and may, in fact, be exacerbated by disaggregation. At least this is the case in rural Alaska, where the elimination of implicit subsidies in certain rural study areas (one of which is described below) would cause rates to skyrocket beyond affordable levels.

The implicit subsidies described in Subsection A (geographic rate averaging, and business/residential cross subsidization) are the norm in rural study areas in Alaska, and their importance cannot be overstated. Geographic rate averaging and business/

residential are vital for keeping rates affordable in very high cost areas, and may be the only manner in which to truly maintain universal service.

Alaska rural LECs serve very small, noncontiguous villages that have very different cost characteristics. Phone service in many of these locations is viable only because of the combination of USF and implicit subsidies. Cold Bay, for example, is a remote, sparsely populated community located on the Alaska Peninsula. It is accessible only by plane or boat. Its residents depend on telephone service to order groceries and supplies, to confer with medical professionals and State agencies, and, when needed, to arrange emergency transport. Cold Bay is an expensive place to provide telephone service and USF alone does not make it affordable.⁹ If the customers of Zone 2 of Cold Bay were to pay the costs of phone service without the benefit of implicit subsidies through rate averaging, the stand-alone rate would be in excess of \$200 per month, after consideration of USF receipts.¹⁰ Such a rate does not comply with the universal service principles that rural rates be affordable and comparable to urban rates.

In regions such as these, where the risks of cream skimming cannot be avoided without compromising the availability of affordable access, the Commission should not permit ETC designation below the study area level.

⁹ Interior Telephone Company provides service to a total of 8,500 customers in 11 exchanges, including Cold Bay, most of which are non-contiguous. Only three of the exchanges are accessible by road. The exchanges are scattered over islands, tundra, mountains and glaciers. Each location has different challenges and cost characteristics.

¹⁰ This calculation is based on disaggregation results from Interior Telephone Company's Disaggregation and Targeting of Support Plan, RCA Docket No. U-02-44, filed May 15, 2002.

IV. USF FOR SECONDARY LINES SHOULD NOT BE LIMITED

Limiting the scope of USF to primary lines does not serve the ends of universal service. Funding only a single line ignores the reality of how telephone networks are built, and may actually increase the burden on the USF.

Building-out a telephone network is not accomplished through a series of individual lines to individual customers. The switches, trunks, and infrastructure necessary to complete the network must be constructed whether a single customer is served, multiple customers are served, or customers receive multiple lines. The cost of each additional line is nominal compared with primary network investment. In short, most of the costs of placing telephone plant are incurred no matter how many lines are placed. Under the current system, the costs of network construction are spread over all lines served.¹¹ If cost-recovery is to be accomplished by spreading costs over only a subset of lines served – for example, over only those lines considered “primary” – then the USF requirement for the subset of lines will increase.¹² Since a competitive ETC’s per-line support mirrors the incumbent’s per-line funding, skewing USF allocation in this manner may actually increase the burden on the USF system.

A primary line policy also discourages network development. If there is no guarantee that a carrier will actually capture or maintain a remotely located customer, or

¹¹ Rural carriers, including the membership of the ATA, receive a material portion of their USF allotment from multi-line customers, both business and residential.

¹² This analysis assumes full cost recovery. Anything less would result in stranded investment. Even if a decision were made to support only the proportion of the network that provides primary lines, the result would be the same: Rates for unsupported second lines would become prohibitively expensive and many would be disconnected. This would increase the proportion of the network supporting primary lines and increase the per-line support for both the incumbent LEC and any competitive ETCs. A policy that would result in unaffordable second lines would be inconsistent with the universal service principle of urban/rural parity.

that its facilities will be considered the “primary” line, the incentive to undertake the investment is decreased. Such a disincentive is of particular concern in Alaska, where the scarceness of community and information resources places a premium on the need to have access to advanced services through a telecommunications carrier. In these areas, infrastructure build-out should be promoted, not discouraged, if universal service is to be preserved.

V. AUCTIONING USF IS UNWORKABLE

The Joint Board has requested input on how auctions might be used to award USF support. The ATA believes that auctioning (in addition to being complicated to administer) is both imprudent and unworkable, particularly in rural Alaska. A system for distributing USF based on the lowest bidder runs counter to the goal of promoting high quality, affordable service to all subscribers, and effectively encourages a “race to the bottom” instead of network enhancement.

Auctioning rewards the lowest bidder – not the carrier with the best service quality, or most advanced service options, or with the proven history of reliable service. In fact, auctioning provides absolutely no incentive to invest beyond the bare minimum required to supply the basic supported services under 47 U.S.C. § 254(c). Indeed, carriers proposing facilities that would go beyond mere compliance with § 254(c) would be penalized, since their bids would likely be less competitive for USF support than those companies who propose to do less. This disincentive to invest remains even after an auction is over. The current auction winner has no guarantee that it will prevail in future bidding, and therefore has no incentive to make long-term investments in facilities or infrastructure. The inescapable result is that the ETC designee under an

auction system is the company that (while still meeting the USF baseline) will do the least to enhance the network.

While it is not clear that auctioning make sense in any rural study area, the disincentives described above are particularly disquieting in Alaska, where the population in remote and insular areas has a critical dependence on reliable telecommunication services. Alaska has often been treated as a special case with regard to telecommunication policy, and deservedly so; Alaska's extreme topography and climate and the diffuseness of its population present challenges unknown in other states. The same should hold true with auctioning USF: In the typical rural study area auctioning is problematic; in Alaska, it is completely unworkable.

The last point is highlighted by several questions posed by the Joint Board. First, the Joint Board asks: "What sort of measures should be adopted to encourage auction winners, as well as losers, to continue investing in high-cost areas?" With regard to the loser, in Alaska, no such measures exist. Auctioning eviscerates the "predictability" that forms the foundation of universal service mechanisms.¹³ Without USF, much if not most of rural Alaska would simply not have any local exchange service at all because the critical infrastructure is so prohibitively expensive. In these areas, the economies of scale cannot be achieved to support even a single carrier without USF, and certainly cannot be expected to support a carrier without USF in competition with a carrier that receives USF.¹⁴ As a result, auctioning in Alaska is a "winner take all" system.

¹³ See 47 U.S.C. § 254(b)(5).

¹⁴ Moreover, the ATA membership has millions of dollars in outstanding loans, including federally subsidized loans (e.g., United State Department of Agriculture, Rural Utilities Service loans).

Second, the Joint Board asks: “Should an ETC be required to assume quality of service obligations?” The answer must be “yes”; but in Alaska, service quality obligations do not go nearly far enough. As an initial matter, the absence of service quality obligation is not competitively neutral – not all carriers are subject to the same level of regulatory oversight with regard to service quality, nor the costs necessary to comply with these obligations. Consequently, carriers without service quality requirements would have an unfair advantage in the ETC bidding process. The same analysis holds true for carrier of last resort (“COLR”) obligations, which are vital to ensure that even the hardest-to-reach customers receive telephone service. Again, auctioning places the incentive in the wrong place – rewarding those who spend less on service quality and those less committed to providing ubiquitous service to all those who request it. The clear loser in this scenario is the rural consumer. Rural consumers in Alaska (particularly in roadless areas) have the most to lose, since reliable telecommunications provides the only link to critical resources.

VI. CONCLUSION

The high-cost USF system is at a turning point: In the balance are universal service principles and public interest considerations that can no longer be ignored. The Joint Board has raised many important issues in its Notice and the ATA appreciates the opportunity to respond to a few matters of critical significance to the ATA, and all rural telephone companies. To summarize the points ATA has covered in these comments: (1) The Commission should adopt uniform guidelines for performing the public interest inquiry, based on a sound cost/benefit analysis, to aide state commissions making ETC-designation decisions in rural areas; (2) Designating ETC’s below the study area level is fraught with problems which are not resolved by disaggregation zones; (3) USF should

be used to fund infrastructure and should not be restricted to primary lines; and (4)
Auctioning USF creates incentives adverse to universal principles and would be
completely unworkable in rural Alaska.

Respectfully submitted this 5th day of May, 2003.

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